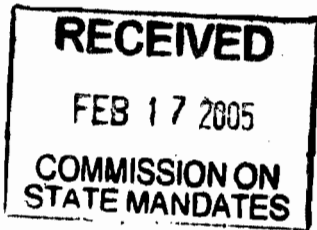




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February 17, 2005

Ms. Paula Higashi, Executive Director  
Commission on State Mandates  
980 – 9th Street, Suite 300  
Sacramento, CA 95814

Re: Comments on Draft Staff Analysis for Case No. 04-RL-3929-05  
Regional Housing Needs Determination—Councils of Governments

Dear Ms. Higashi:

This letter is submitted on behalf of the Sacramento Area Council of Governments ("SACOG") in response to the draft staff analysis prepared for the above-referenced case. SACOG disagrees with the staff recommendation, and again requests that the Commission find that preparation of the regional housing needs assessment required by Government Code section 65584 continue to be a reimbursable state mandate under section 6 of Article XIII B of the California Constitution.

The draft staff analysis recommends that the Commission cease providing reimbursement for preparation of the regional housing needs assessment on two alternative grounds: First, the draft staff analysis argues that the councils of government ("COGs") are not eligible to claim reimbursement for a state mandate under Article XIII B, section 6. Second, the draft staff analysis asserts that the COGs are not entitled to reimbursement because Government Code section 65584.1 grants the COGs with fee authority that offsets the cost of preparing the regional housing needs assessment. The draft staff analysis summarizes the comments submitted by several interested parties, including SACOG, the California Association of Councils of Governments, the San Diego Association of Governments, the Southern California Association of Governments, the League of California Cities, the California State Association of Counties, and the California Building Industry Association. However, the draft staff analysis fails to respond to several of the arguments in favor of reimbursement made by the interested parties. Because the draft staff analysis fails to adequately address the arguments made by the interested parties, the Commission should not follow the staff recommendation.

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The draft staff analysis first finds that the COGs are not eligible for reimbursement of state mandated costs because COGs do not have the authority to levy and collect taxes. The draft staff analysis completely ignores the fact that, because the COGs receive their revenue from dues paid by member agencies, the COGs' activities are paid for nearly exclusively from local agency tax revenues. By requiring the COGs to prepare the regional housing needs assessment, the state did impose a new program on local government agencies. Unless the cost of preparing the regional housing needs assessments is reimbursed by the State, local tax revenues will be used to pay for the cost of the program. This point was raised in the comments of several of the interested parties, including SACOG, but was completely ignored in the draft staff analysis. The COGs are eligible claimants, and should continue to be reimbursed for the cost of preparing the regional housing needs assessments.

The draft staff analysis additionally states that the costs of preparing the regional housing needs determination need not be reimbursed because the new Government Code section 65584.1 provides the authority to levy a fee for the cost of preparing the regional housing needs assessment. The draft staff analysis dismisses the comments of the interested parties out of hand. The staff relies on *Connell v. Superior Court of Sacramento County* (1997) 59 Cal.App.4th 382, which held that a local water district was not entitled to reimbursement when that district had actual authority to levy fees sufficient to pay the costs of a new program, even though the district found it economically and politically undesirable to exercise its power. Based on *Connell*, the staff declares that it "does not find convincing the various arguments regarding the sufficiency or the difficulty of the basis for the fee. These arguments are not relevant to the legal inquiry because the sole consideration is whether COGs have fee authority." (Draft Staff Analysis p. 23.) The draft staff analysis misconstrues the comments of SACOG, SCAG, the League of California Cities, and the California Building Industry Association. SACOG and others argue that the fees authorized by Government Code section 65584.1 are not legitimate fees, and that local agencies will not be able to levy these fees at all. This is not a question of convenience or political expediency. The interested parties argue that the fee authority granted by section 65584.1 is not a legitimate authority, and therefore the state must still reimburse the COGs for the cost of preparing the regional housing needs determination. This argument is essentially ignored in the draft staff analysis. Because the draft staff analysis does not adequately address the arguments raised in the interested parties' comments, the Commission should not rely on the draft staff analysis in making its determination.



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The draft staff analysis ignores many of the valid arguments made by the interested parties. SACOG therefore again requests, based on our December 1, 2004 letter to you, the rebuttal brief filed by the COGs, and the other comments filed by the COGs, the League of California Cities and the California Building Industry Association, that the Commission continue to provide reimbursement to the COGs for preparation of the regional housing needs assessment.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Harriet Steiner', written over the typed name.

Harriet A. Steiner

HAS:ew

cc: Michael McKeever, SACOG  
Joan Medeiros, SACOG